IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.24339 of 2004

Between:

1 Abdul Nabi, s/o Peer Mohammed,
r/o H.No.5-5-281, situated at Nampally, Ek-Minar Masjid, Hyderabad.
2 Abdul Raheem, s/o Peer Mohammed,
r/o H.No.5-5-281, situated at Nampally, Ek-Minar Masjid, Hyderabad.
3 Abdul Kareem, s/o Peer Mohammed,
r/o H.No.5-5-281, situated at Nampally, Ek-Minar Masjid, Hyderabad.

..... PETITIONERS

AND

1 Assistant City Planner, T.P.Circle No.6, Municipal Corporation of

Hyderabad, Abids, Hyderabad.
2 Commissioner, Municipal Corporation of Hyderabad,
Tankbund, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of respondent No.1 dt.27-12-2004 orally directing the petitioners to receive a cheque for Rs.1,50,000/- and to handover the property bearing No.5-5-281, situated at Nampally Ekminar Masjid, Darusalam Road, Hyderabad for road widening as illegal, arbitrary, null and void violation of Sections 146 and 147 of H.M.C.Act and also contrary to the judgment of this Hon'ble Court made in WP No.3052 of 2003 dated 19-2-2003, and to restrain the respondents from dispossessing the petitioners from their respective premises, and pass such other order or orders

Counsel for the Petitioners:MR.MOHD.ZIA-UL-HAQUE

Counsel for the Respondents: MR.RAMA RAO GANTA

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

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WRIT PETITION NO.24339 OF 2004

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ORDER:

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The petitioners allege that they are owners of the premises bearing No.5-5-281, Nampally, Hyderabad. They filed this writ petition alleging that on 22.12.2004 the first respondent came to the locality and gave cheques for Rs.1,50,000/- and asked them to handover the premise. He also threatened the petitioners that if petitioners are not handedover the premises by taking the cheques, the building would be demolished. Therefore, the petitioners submit that any such action without due process of law under the provisions of the Hyderabad Municipal Corporations Act, 1955 or the Land Acquisition Act, 1894 or other laws is arbitrary and illegal.

Heard the learned Standing Counsel for the respondent – Municipal Corporation.

In **P.Lakshmana Rao v. Executive Officer,** a Division Bench of this Court issued directions to be followed by Municipal authorities, Panchayat authorities and Revenue authorities for acquiring the land for public purpose. Having regard to the decision of the Division Bench, I have considered similar issue in a number of writ petitions and culled out various principles of law to be followed by the Government while acquiring/utilizing the private land for road widening. The principles were reiterated by my learned brother, Sri Justice B.Sudershan Reddy in **M.Madhavi Latha v. Rajendranagar Municipality**. The principles laid down by the Division Bench are as follows.

(1). Where a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property.

(2). If the authorities concerned want to take action for eviction/dispossession of the occupants or demolition, they shall issue 60 days' prior notice notifying as to the nature of the property, the property to whom it belongs and the proposed action calling for explanation/objections, if any, from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the extent of encroachment or unauthorised occupation and also determine whether the

property in question belongs to Government/any other local self Government or authority or the occupants and pass appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.

(3). In case where demolition of private property has already been made, the authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and disburse the amount of damages quantified forthwith.

(4). If the demolition is in respect of local bodies' Government property, the question of damages does not arise. In such an event, the occupant shall be entitled to remove the material used for the construction.

(5). In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R&B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.

(6). If there is any claim for grant/assessment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of occupants, after making enquiry and till such claim is decided, there shall be status quo obtaining as on today regarding the structures.

The writ petition is disposed of as above directing maintenance of status quo as on today. No costs.

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(V.V.S.RAO, J)

28.3.2003

bnr

Note: CC by 31.3.2003

(B.O)

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To

1 The Assistant City Planner, T.P.Circle No.6, Municipal Corporation of Hyderabad, Abids, Hyderabad.

2 The Commissioner, Municipal Corporation of Hyderabad, Tankbund, Hyderabad.

3 Two C.D. Copies.